

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION

MDL No. 2804

This document relates to:

Case No. 17-md-2804

*The Montgomery County Board of County
Commissioners et al. v. Cardinal Health, Inc.,
et al.*, Case No. 1:18-op-46326-DAP
("Track Seven")

Judge Dan Aaron Polster

**PLAINTIFF'S RESPONSE TO KROGER'S MOTION TO PRESERVE PRIOR *DAUBERT*
RULINGS AND OBJECTIONS THERETO**

Kroger seeks an order from this Court preserving the Court's prior *Daubert* rulings and Kroger's objections to those rulings. Plaintiff has separately moved for an order presumptively applying this Court's prior MDL rulings and establishing a procedure for any party to show why different circumstances call for a different result with respect to any particular ruling by April 3, 2023. MDL ECF No. 4930 (Mar. 9, 2023). The two motions are complementary: both parties agree that prior rulings are presumptively applicable and that, in the absence of a demonstrable reason for this Court to depart from its prior rulings in this case, neither party should be required to file a duplicative motion solely to preserve an issue for appeal.

Accordingly, in order to preserve Plaintiff's objections to *Daubert* rulings from CT1 and CT3 with results adverse to the plaintiffs in those cases and the arguments Plaintiff has advanced in opposition to the rulings Kroger seeks to challenge, Plaintiff hereby asks the Court to incorporate its rulings and Plaintiff's objection to those orders.

For the Court's convenience, Plaintiff here identifies the MDL ECF docket numbers of all of the *Daubert* rulings which Plaintiff understands the Parties seek to incorporate by reference here.

- Opinion and Order Denying Motion to Exclude Keller, MDL ECF No. 2492 (Aug. 20, 2019) (CT1A);
- Opinion and Order regarding Defendants' Motions to exclude opinions of James Rafalski and Craig McCann, MDL ECF No. 2494 (Aug. 20, 2019) (CT1A);
- Order denying Motion to Exclude Testimony of Katherine Keyes, Anna Lembke and Jonathan Gruber re the "Gateway Hypothesis" of Causation; MDL ECF No. 2518 (Aug. 26, 2019) (CT1A);
- Order Denying Defendants' Abatement Motion; MDL ECF No. 2519 (Aug. 26, 2019) (CT1A);
- Order denying Motion to Exclude Cutler; MDL ECF No. 2542 (Aug. 27, 2019) (CT1A);
- Opinion and Order granting in part Defendants' Motion to Exclude Marketing Causation Opinions of Schumacher, Lembke, and Keyes; MDL ECF No. 2549 (Aug. 27, 2019) (CT1A);
- Opinion and Order granting in part Defendants' Motion to Exclude Opinions of James Rafalski; MDL ECF No. 3929 (Sept. 07, 2021) (CT3);
- Opinion and Order regarding the expert opinions of Dr. Katherine Keyes; MDL ECF No. 3946 (Sept. 13, 2021) (CT3);
- Opinion and Order granting in part Defendants' Motion to Exclude Opinions of Carmen Catizone; MDL ECF No. 3947 (Sept. 13, 2021) (CT3);
- Opinion and Order Denying Defendants' Motion to Exclude opinions of Caleb Alexander; MDL ECF No. 3948 (Sept. 13, 2021) (CT3);
- Opinion and Order Denying Defendants' Motion to Exclude opinions of Craig McCann; MDL ECF No. 3949 (Sept. 13, 2021) (CT3);

- Marginal Order Denying Defendants' Motion to exclude certain expert testimony based on track one arguments; MDL ECF No. 3950 (Sept. 14, 2021) (CT3);
- Opinion and Order granting in part Pharmacy Defendants' Motion to Exclude testimony of Anna Lembke; MDL ECF No. 3953 (Sept. 17, 2021) (CT3)

Dated: March 9, 2023

Respectfully submitted,

/s/Peter H. Weinberger
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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2023, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system and may be obtained by using the CM/ECF system. Copies will be served upon counsel of record by, and may be obtained through, the Court CM/ECF system.

/s/Peter H. Weinberger
Peter H. Weinberger